

**DISTRICT OF COLUMBIA  
OFFICE OF ADMINISTRATIVE HEARINGS**  
One Judiciary Square  
441 Fourth Street, NW  
Washington, DC 20001-2714  
TEL: (202) 442-9094  
FAX: (202) 442-9451

YOUTH ENGAGED FOR SUCCESS, INC.,  
Appellant/Petitioner,

CITY GATE, INC.,  
Intervenor,  
v.

DISTRICT OF COLUMBIA OFFICE OF  
STATE SUPERINTENDENT OF  
EDUCATION,  
Appellee/Respondent.

Case No.: 2011-OSSE-00003

---

**FINAL ORDER**

**I. Summary of Final Order**

This Final Order affirms in part, and reverses, in part, the Office of State Superintendent of Education's (OSSE) audit report dated August 4, 2011, which requires Petitioner Youth Engaged for Success (YES) to repay \$157,642.77. I conclude that the total amount YES is required to repay is \$154,461.01.

**II. Introduction**

On August 26, 2011, YES filed a Notice of Appeal and Request for Hearing challenging an August 4, 2011, letter from OSSE, which required YES to repay \$157,642.77 for payments YES received from the 21<sup>st</sup> Century Community Learning Center (CCLC) program. I convened status conferences on September 2 and 23, 2011.

On September 22, 2011, OSSE filed a status report identifying several costs totaling \$2,181.76 that it previously disallowed, but will no longer contest. YES further agreed to not contest \$13,574.51 of expenses that were the subject of the August 4, 2011 audit report, which left \$141,886.50 in dispute.

On September 13, 2011, City Gate, Inc. filed a motion to intervene. On September 23, 2011, YES filed a motion in support of City Gate's motion to intervene. By Order entered September 26, 2011, I granted City Gate's motion to intervene.

An evidentiary hearing convened on December 12, 13 and 16, 2011, and reconvened on February 3, 2012. OSSE appeared represented by Adrienne Day, Assistant Attorney General of OSSE. City Gate, Inc., the intervenor, appeared represented by Joseph Bower, Esquire, and YES appeared represented by Joseph Davis, II, Executive Director.

By Order entered January 23, 2012, I reopened the record to clarify OSSE's precise demand from YES. A supplemental hearing reconvened on February 3, 2012. The same representatives appeared. At that hearing, OSSE affirmed its status report filed September 22, 2011.

Sheryl Hamilton, director of school support testified on behalf of OSSE. Pastor (Dr.) Lynn Bergfalk, director of City Gate, Inc. testified on behalf of City Gate, Inc. Karen Butts, Sheryl Hamilton, and Kenneth Carroll testified in Petitioner's case in chief.

During the proceedings, YES moved to require OSSE to submit a full description of all of Petitioner's workbook items used in this case. That motion was granted, and by Order entered December 20, 2011, Petitioner was given an opportunity to file a post hearing submission challenging any workbook items that were the subject of this proceeding.

On December 21, 2011, OSSE filed its completed workbook items. On December 27, 2011, Petitioner filed its objections to admission of the truncated version of OSSE's workbook report, as compared to the full workbook report. I sustain the objection and will admit OSSE's full workbook report. Petitioner further asks the court to admit into evidence its January 2010 reimbursement request. That motion is granted in part and denied in part. The motion is denied in part because good cause has not been established to allow an untimely submission. There is no evidence that Petitioner timely submitted this information to OSSE. The motion is only granted in part because OSSE concedes to one expense that was allowed from the January 2010 report in the amount of \$84.79 for a hard drive cost.

The exhibits admitted into evidence are in the appendix at the end of this decision.

Based on the testimony of the witnesses, my evaluation of their credibility, the documents admitted into evidence, and the entire record, I now make the following findings of fact and conclusions of law.

### **III. Findings of Fact**

1. In 2009, OSSE announced Request for Applications (RFA) No. 0206-09 seeking applicants for the 21<sup>st</sup> Century Community Learning Centers Program (21<sup>st</sup> Century Grant). This is a federally funded grant administered by OSSE under Title IV, Part B of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001, Pub. L. No. 107-110. (Petitioner's Exhibit "PX" 123).

2. In the RFA, OSSE "mandates applicants to submit proposals which establish a partnership of at least one local educational agency (LEA) and one non-school entity." OSSE also states in its RFA that the "partnership consortium must appoint one of the applicant/participants to be a fiscal agent for the grant. The applicant agency must be an

eligible grant recipient. All other partners/consortium members must be eligible grant participants, as defined by the program statute or regulation. The applicant must receive and administer the grant funds and submit the required reports to account for the use of grant funds. The applicant must require consortium partners to sign an agreement with the fiscal agent that specifically outlines all services each partner will provide.” (PX 123).

3. On or about May 20, 2009, YES, as applicant and fiduciary agent, submitted an application in response to OSSE’s RFA. (Testimony of Dr. Lynn Bergfalk and Ms. Sheryl Hamilton).

4. YES complied with the OSSE mandate that grant applicants partner with community organizations by partnering with City Gat, an eligible grant participant.

5. On July 9, 2009, Mr. Derrick Blue (Blue), OSSE Program Manager, sent an email to Mr. Joseph Davis (Davis) informing him that OSSE has approved YES’s grant application. (PX 124). Blue sent a FY 2010 Grant Award Notification by email on September 29, 2009. (PX 126).

6. The Grant Award Notice, dated September 24, 2009, designates YES as the recipient and Blue as the “OSSE Program Contact.” The Grant Award Notice, at the section captioned “Explanation of Blocks on the Grant Award Notification,” provides that Blue was “OSSE’s official point of contact for all matters relating to the award.” (Respondent’s Exhibit “RX” 200)

7. The sole recipient of the grant and expansion grant was YES. (Testimony of Ms. Sheryl Hamilton).

8. The Grant Award Notice provides that the original grant award was \$250,000. (RX 200).

9. The Grant Award Notice also states that July 1, 2009 was the “First date for obligating funds,” and that September 30, 2011, was the “Last date to obligate funds.” (RX 200).

10. In the Grant Award Notice section entitled, “Explanation of Blocks on the Grant Award Notification,” it states that payroll transactions must include “time and effort records demonstrating employees worked on grant activities; time and attendance records demonstrating when employees worked on grant activities; time and attendance records demonstrating when employees worked; evidence of payroll reconciliations; accounting records indicating how salaries were charged; and/or payment records indicating how salaries were paid.” (RX 200).

11. The Grant Award Notice states that the “grant award is made subject to the terms of the approved application and budget submitted by the recipient.” (Respondent Ex. 200)

12. The Grant Award Notice provides that, “payment of grant funds shall be made through the OSSE Cost Reimbursement Process in accordance with Section 80.21(d) of the Education Department General Administrative Regulations (EDGAR).” Further, “Grant recipients shall receive payments for services after they substantiate that the cost is allowable and is relevant for submitted program expenditures.” RX 200, pages 2-3.

13. To request a cost reimbursement, a grant recipient had to submit to OSSE for review and processing, Federal Grant Reimbursement Forms (containing valid costs **paid** by the grant recipient).” (RX 200, page 3).

14. OSSE made payments to YES after a request for reimbursement was received.

15. YES prepared and submitted to OSSE workbooks identifying expenses for which it sought reimbursement.

16. In the application for funding, City Gate was identified as a community partner and signed a Memorandum for Understanding (MOU), which detailed the arrangements between YES and City Gate. In the MOU it states that YES is the primary organization and fiduciary agent for the grant with OSSE. In addition, the MOU states that YES would act as lead administrator of all grant funding, but not limited to, the disbursement of funds provided under the award. (Intervenor's Exhibit "IX" 316)

17. City Gate and YES sought reimbursement from OSSE on behalf of City Gate before submitting invoices to YES.

18. YES has paid City Gate \$16,645.80 of City Gate's invoices for which YES sought reimbursement from OSSE. Intervenor Exhibit 213 contains the five invoices (two in October 2009, two in November 2009, and one from January 2010, along with a \$1,700 rent payment City Gate paid to secure the Merrick Center).

19. OSSE disallowed YES's request for OSSE's payment of City Gate's outstanding invoices through YES because YES had not first paid City Gate's invoices.

20. OSSE would reimburse for an allowable expense if the expense was charged to a credit card, but had not yet paid the credit card invoice before seeking reimbursement from OSSE.

21. OSSE received various complaints from vendors that they had not been paid by YES. As a consequence OSSE decided to monitor YES.

22. Rent was not received for the use of the Victory Youth Center for the months of October, November, and December 2009. (Testimony of Julie Donnatelli).

23. On August 24, 2010, OSSE sent YES's Davis a letter informing YES that it was terminating the 21<sup>st</sup> Century Grant dated September 15, 2009 and July 8, 2010. (RX 218)

24. The August 24, 2010 OSSE termination letter provides a number of reasons why OSSE chose to terminate the YES grant. OSSE conducted an on-site visit on August 5-6, 2010 and made the following discoveries:

- a) YES failed to maintain expenditure transaction files in such a manner that supporting documents could be easily located. YES has not developed a system to review and track the budget or expenses.
- b) The Executive Director is the only person responsible for the bookkeeping, the accounts receivable and payable processes, the completion of payroll, the creation and approval of purchase orders (POs), and the completion of reimbursement requests. The Executive Director is the only required signatory for checks. Additionally, the Executive Director has utilized online banking to make transfers among three banking accounts (one is for the 21<sup>st</sup> Century Grant, another is YES's general operations account, and the third is unidentified).
- c) YES could not provide evidence of time and effort records supporting staff paid out of federal funds.
- d) YES has not developed any internal control policies for payroll. There are no controls in place that prevent the issuance of payroll checks prior to time and attendance being approved. There is no segregation of duties. Payroll checks are distributed by the Executive Director, who is also the person that prepares payroll, supervises employees, approves time reports and signs paychecks.

25. Grant letter, RX 200, contains the following provisions: "Grant recipients are responsible for ensuring all costs charged to federal grants are allowable. OSSE staff may request documentation to support grant recipients expenditures prior to approving

reimbursement forms. If the OSSE determines, at any time that a cost is unallowable, it may disallow the cost. If the grant recipient has already been reimbursed for the cost, it may be required to repay funds to the OSSE.”

26. OSSE paid YES the following workbook request expenditures before the expenditures were sufficiently substantiated:

- a) October 1, 2009-October 31, 2009 in the amount of \$30,733.81
- b) November 1, 2009-November 30, 2009 in the amount of \$24,577.32
- c) December 1, 2009 – December 31, 2009 in the amount of \$16,703.50
- d) February 1, 2010 – February 28, 2010 in the amount of \$21,865.94
- e) March 1, 2010 – March 31, 2010 in the amount of \$19,607.50
- f) April 1, 2010 – April 30, 2010 in the amount of \$21,075.67

27. OSSE made a duplicate payment to YES of \$30,833.81 on January 5, 2010. PX 164.

28. When adding the allowed workbook expenses, plus the duplicate payment of \$30,833.81, YES received a total of \$165,297.55 from OSSE. PX 164.

29. YES substantiated to OSSE expenses paid in the total amount of \$7,654.78. Respondent’s Exhibit “RX” 222.

30. In its September 22, 2011, status report submission, OSSE stipulates to allow the following reimbursement requests, which YES submitted: a) a request for payee Antoinette Tourain in the amount of \$386.97; b) a request for a hard drive in the amount of \$84.79; and c) a request for payee Victory Youth Centers, Inc., in the amount of \$1,710. These expenses total \$2,181.76.



31. YES owes OSSE \$154,461.01 for unsubstantiated costs contained in its workbooks from October 1, 2009 through April 2010.
32. OSSE disallowed and did not pay the following workbook requests:
- a) May 1, 2010 - May 31, 2010 prepared July 5, 2010, in the amount of \$22,331.11
  - b) May 1 through May 31, 2010 prepared September 22, 2010, in the amount of \$13,766.38
  - c) June 1, 2010 through June 30, 2010 prepared October 5, 2010 in the amount of \$10,898.59
  - d) April 1, 2010 through June 30, 2010 prepared October 13, 2010 in the amount of \$14,232.88
  - e) July 1, 2010 through July 31, 2010 prepared November 14, 2010 in the amount of \$43,461.15
  - f) February 1, 2010 through July 31, 2010 prepared October 11, 2010 in the amount of \$19,356.40
  - g) August 1, 2010 through August 31, 2010 prepared November 14, 2010 in the amount of \$31,711.64.

**A. Victory Youth Center Rent Payments**

33. YES entered into a lease agreement with Victory Youth Center to use the Merrick Center at 4265 4<sup>th</sup> Street, SE; Washington, DC 20032, from October 2009 through August 15, 2010. (Testimony of Julie Donatelli and PX 165.)

34. Rental payments were \$1710 per month, except in July, 2010, rent increased to \$2,550, and from August 1-15, rent was \$2,075. (Testimony of Donatelli and PX 166.)

35. Victory Youth Center received five total rent payments from YES on January 30, 2010, February 28, 2010, May 3, 2010, and May 13, 2010. The April 2010 rent payment to Victory Youth Center was paid by City Gate.

36. YES received reimbursement from OSSE for seven rent payments to Victory Youth Center.

37. The balance of rent YES owes Victory Youth Center of \$13,175 remains unpaid.

**B. October 2009 Workbook OSSE Received From YES**

38. OSSE disallowed as unsubstantiated the following costs YES presented in its workbook from October 1, 2009 through October 30, 2009:

- a) B and H photograph - \$993.86
- b) Five Best Buy purchases totaling \$3304.53
- c) Great Leap software - \$559.90
- d) City Span for \$1,000
- e) Joseph Davis for \$6,600
- f) Benjamin Wiggins for \$896
- g) Yasmine Sabur for \$384
- h) Tildon \$448
- i) Tildon \$1100
- j) Tildon \$7600 cash withdrawal
- k) Olatokumbo Fashola for \$4,000 because a cancelled check was provided for \$3,000 instead.

**C. November 2009 Workbook**

39. OSSE disallowed as unsubstantiated the following costs presented by YES covering November 1, 2009 through November 30, 2009:

- a) Joseph Davis \$5,700
- b) Benjamin Wiggins \$1,104
- c) Tildon \$768
- d) Tildon \$600
- e) Tildon \$784
- f) Tildon \$5400
- g) Tildon \$360 (canceled check provided for different payee (Antoinette Torrain))
- h) YES also requested reimbursement prior to paying the cost of an evaluation - \$3,000.
- i) YES presented three City Gate costs of \$2,018.64, \$1,913.89 and \$831.62, totaling \$4,764.15. The reason for disallowing this expense to City Gate is because the canceled checks were provided for the amounts of \$1,481.98 and \$4,506.35, totaling \$5,988.33, different amounts than the reimbursement requested, and the November City Gate written invoice provided for different and conflicting amounts (\$2,018.64, \$1,759.84, and \$831.62) than stated in the reimbursement workbook.

**D. December 2009 Workbook**

40. On January 13, 2010, YES prepared a workbook requesting reimbursement for program costs from December 1, 2009 through December 31, 2009.

41. YES did not provide documentation to substantiate four Tildon costs -- \$384, \$1,104, \$750 and \$780.
42. YES did not provide documentation to substantiate payment made to Joseph Davis for \$5,950 in December 2009. The canceled checks provided were for different amounts of \$52.97, \$65.66, \$50.87, \$2,219.25 and \$2,219.25, totaling \$4,608. That total of \$4,608 was different than stated in the reimbursement request workbook, and no timesheets, payroll information with required tax deductions or other receipts were provided.
43. YES did not provide documentation to substantiate payment made to Benjamin Wiggins in the amount of \$592. The canceled checks provided were for different amounts of \$1,104 and \$692.16, and no timesheets or other payroll information with required tax deductions or receipts were provided.
44. YES did not provide documentation to substantiate payment made to Yasmine Abdul-Sabur for \$1,164. The canceled check YES provided was for a different amount of \$352.26 than requested in its reimbursement workbook. Moreover, no timesheets or other payroll information of required tax deductions was provided.
45. YES did not provide proof of payments it sought reimbursement for Tildon in the amounts of \$3,000 and \$1,100.

**E. January 2010 Workbook Deficiencies**

46. On March 8, 2010, YES submitted a workbook to OSSE requesting reimbursement for program costs from January 1, 2010 through January 31, 2010.
47. YES did not provide supporting documentation to substantiate two payments made to Joseph Davis in the amount of \$227.77 and \$9.52.

48. YES did not provide supporting documentation to substantiate a payment made to Embassy Suites for \$1,974.11.
49. YES did not provide supporting documentation to substantiate paying Travel Leaders \$1,796.
50. YES did not provide supporting documentation to substantiate paying Destiny Management Services \$1,672.
51. YES did not provide supporting documentation to substantiate paying Olatokunbo Fashola \$4,000.
52. YES did not provide supporting documentation to substantiate paying Travelocity \$956.50.
53. YES did not provide supporting documents to substantiate paying City Gate \$5,674.79.
54. YES provided insufficient documents to support paying Tildon costs of \$656 and \$3,440. The invoice provided was for a different amount of \$150 and \$3,500 than the reimbursement requested, and no canceled checks were provided.

**F. February 2010 Workbook**

55. On March 15, 2010, YES provided a workbook to request reimbursement from OSSE for program costs from February 1, 2010 through February 28, 2010.
56. YES did not provide documentation to substantiate two costs to Tildon of \$330.95 and \$2,561.
57. YES provided insufficient documentation to substantiate payments to Tildon in the amount of \$629.41 and \$3,500 because no canceled checks or invoices were provided. Only one invoice was provided for \$3,500. Another Tildon invoice was for a different amount of \$1,100.

58. YES provided insufficient documentation to substantiate payments to Joseph Davis for \$5,100. The canceled check YES provided was for a different amount than its reimbursement request, and no timesheet or payroll information with required tax deduction was provided.
59. YES provided insufficient documents to substantiate City Gate's costs totaling \$5,601.08. The invoice presented was prepared four months after the reimbursement request was provided, and there was no proof YES paid this vendor.
60. YES provided insufficient documents to substantiate paying Karen Butts \$2,025.

**G. March 2010 Workbook**

61. On April 12, 2010, YES submitted a workbook to OSSE to request reimbursement for expenses from March 1, 2010 through March 31, 2010.
62. YES did not provide sufficient documentation to substantiate two Tildon costs of \$2,070 and \$1,027.50, a \$900 payment to Karen Butts, and a \$2,500 evaluation fee.
63. YES did not provide sufficient documentation to substantiate payment to Joseph Davis of \$6,900. The canceled check provided was for a different amount than the reimbursement requested, and no timesheets or other supporting payroll information with required tax deductions was provided.
64. YES did not provide proof of payment to Tildon for \$4,500. The canceled check provided dated April 26, 2010, was for a different amount of \$500, than stated on the invoice and reimbursement request workbook.

**H. April 2010 Workbook**

65. On May 18, 2010, YES submitted to OSSE a workbook requesting reimbursement for program costs from April 1, 2010 through April 30, 2010.

66. YES failed to provide documentation to substantiate payment of \$6,600 to Joseph Davis and \$1,100 to Karen Butts.
67. YES provided insufficient documentation to substantiate paying Tildon costs of \$4,500, \$3,492 and \$810. Invoices provided do not match reimbursement requests. YES used the \$3500 canceled check from its March 2010 workbook to support the April 2010 costs.
68. YES failed to provide documentation to support payment to OSI of \$1,000. No invoice was provided.
69. YES failed to provide documentation to support payment of \$900 to Juanita Savoy. The invoice provided was for a different amount of \$450 than the reimbursement request. The canceled check provided was for a different amount of \$450 than the reimbursement request.
70. Payment to Joseph Davis in the amounts of \$128.21, \$158.69 and \$199.80 were not properly supported or substantiated. RX 208. Receipts totaling \$119.80 were presented to OSSE. RX 208.

**I. First May 2010 Workbook**

71. On July 5, 2010, YES submitted a workbook to OSSE requesting reimbursement for program costs from May 1, 2010 through May 31, 2010.
72. YES does not contest OSSE's disallowance of \$3,281.77 in fringe benefits.
73. YES failed to provide documentation to support payment to Benjamin Wiggins of \$949.34, Tildon costs of \$3,500, \$3,920 and \$1,002.50, payment to Karen Butts of \$1,100, and payment to Juanita Savoy of \$867.50.

74. YES failed to provide sufficient documentation to substantiate payment of \$6,000 to Joseph Davis. No timesheets were submitted or other payroll information. Timesheets were signed nearly four months after the pay period ended. RX 209.

**J. Second May 2010 Workbook**

75. On September 22, 2010, YES submitted to OSSE a second May 2010 Workbook requesting reimbursement for program costs from May 1, 2010 through May 31, 2010.

76. OSSE no longer contests the payment of \$1,000 to Karen Butts<sup>1</sup>.

77. YES failed to substantiate the payment of \$6,000 to Joseph Davis and the payment of \$560 to Benjamin Wiggins. RX 210.

78. YES failed to properly substantiate payroll costs with appropriate timesheets or receipts for the following individuals: (1) payments to Antoinette Tourain of \$600 and \$210; (2) payment of \$288 to Angel Shingler; (3) payment of \$100 to Christine Brown; (4) payment of \$31.50 to Tiffany Carter; (4) payment of \$75 to Chew Shannon; (5) payment of \$50 to Norris Williams; (7) payment of \$65.63 to Robert Robinson; (8) payment of \$450 to Juanita Savoy; (9) payment of \$325 to Amani Al-Fatah; (10) payments to Crystal Adams in the amounts of \$442.50, \$527.50 and \$150; (11) payments to Adrian Winslow in the amounts of \$150 and \$250; (12) payment of \$560 to Christopher Green; (13) payment of \$243.75 to Adell Coleman; and (14) payment of \$1,687.50 to Kenneth Carroll. RX 210.

---

<sup>1</sup> In OSSE's Proposed Findings of Fact filed with this administrative court on December 23, 2011, OSSE admitted that it no longer contests payment of \$1,000 to Karen Butts identified in the May 2010 workbook based on her testimony during the evidentiary hearing on December 13, 2011.



**K. June 2010 Workbook**

79. On October 5, 2010, YES submitted to OSSE, a workbook requesting reimbursement for program costs from June 1, 2010 through June 30, 2010. RX 211.
80. YES provided insufficient documentation to support payment of \$408 to James Crook. No timesheets or receipts were provided.
81. YES provided insufficient documentation to support payment of \$560 to Christopher Green. No timesheets or receipts were provided.
82. YES provided insufficient documentations to support payment of \$460 to Crystal Adams. No timesheets or receipts were presented to OSSE.
83. YES provided insufficient documentation to support payment of \$275 to Adell Coleman. No timesheets or receipts were provided.
84. YES provided insufficient documentation to support payment of \$112.50 to Christy Davis. No timesheets or receipts were provided.
85. YES provided insufficient documentation to support payment of \$495 to Juanita Savoy. No timesheets or receipt were provided.
86. YES provided insufficient documentation to support payments made to Kenneth Carroll in the amount of \$1,250 and \$350. No timesheets or receipts were provided.
87. YES provided insufficient documentation to support payments made to Antoinette Tourain in the amounts of \$210 and \$78.09. No timesheets or receipts were provided.
88. YES provided insufficient documentation to support payment of \$6,600 to Joseph Davis. The canceled check provided was for \$1,203.75 (check no. 1371 dated September 2, 2010), a different amount than stated in the reimbursement request workbook. No timesheets were provided.

**L. April-June 2010 Workbook**

89. On October 13, 2010, YES submitted a workbook to request reimbursement for program costs incurred from April 1, 2010 through June 30, 2010.
90. YES did not provide proof of payment of City Gate's costs totaling \$14,282.94. No payment date, or check number for the canceled check was produced.

**M. July 2010 Workbook**

91. On November 14, 2010, YES submitted to OSSE, a workbook to request reimbursement for program costs from July 1, 2010 through July 31, 2010.
92. YES failed to provide documentation to support payment of \$1,830 to Crystal Adams. No timesheets or canceled checks were presented to OSSE.
93. YES failed to provide documentation to support payment of \$1,980 to Juanita Savoy. No timesheets or canceled checks were provided to OSSE.
94. YES failed to provide documentation to support payment of \$600 to Matthew Oden. No timesheets or canceled checks were presented to OSSE.
95. YES failed to provide documentation to support payment of \$600 to Angel Shingler. No timesheets or canceled checks were presented to OSSE.
96. YES failed to provide documentation to support payment of \$1,140 to Christopher Harris. No timesheets, receipts or canceled checks were provided to OSSE.
97. YES failed to provide documentation to support payment of \$4,600 to K-Consulting. No invoice was presented, nor was there a canceled check reflecting proof of payment.
98. YES failed to provide sufficient supporting documentation in payment of \$6,000 to Joseph Davis. Canceled checks were provided for different amounts of \$1,203.70 (check

No. 1385) and \$1203.70 (check No. 1386) than stated on the reimbursement workbook.

No timesheets or receipts were provided.

99. YES failed to provide sufficient supporting documentation for payment of City Gate in the amount of \$21,881.15. The invoice YES presented to OSSE provided a different amount of \$21,477.14 than the reimbursement amount requested. No canceled checks were provided.

**N. February – July 2010 Workbook**

100. On November 10, 2011, YES submitted to OSSE a workbook requesting reimbursement for program costs covering the time period February 1, 2010 through July 31, 2010. RX 214.
101. YES provided insufficient documentation to substantiate payment of \$6,300 to Joseph Davis. Canceled checks were provided for different amounts of \$1,203.75 (check No. 1400) and \$1203.75 (check No. 1401) than stated in the reimbursement workbook. No timesheets were provided.
102. YES provided insufficient documentation to substantiate payment of \$600 to Ahlisha Perry. The canceled check YES presented to OSSE was for a different amount than stated on its reimbursement request workbook.
103. YES provided insufficient documentation to substantiate payments of \$307.50 and \$292.50 to Crystal Adams. No timesheets or receipts were presented to OSSE.
104. YES provided insufficient documentation to substantiate payments of \$560 and \$485 to Juanita Savoy. The canceled check presented to OSSE was for a different amount of \$435 (check No. 1364) than sought in the reimbursement request workbook. No timesheets were presented to OSSE to support payment of \$485 to Savoy.

105. YES provided insufficient documentation to substantiate payments of \$616 and \$460 to Christopher Green. No timesheets were presented to OSSE.
106. YES provided insufficient documentation to substantiate payment of \$287.50 to Amani Al-Fatah. No timesheets or receipts were provided.
107. YES provided insufficient documentation to substantiate payment of \$378 to Angel Shingler. No timesheets were presented to OSSE.
108. YES failed to provide proof of payment of \$9,669.90 to City Gate from its February 2010 Workbook.

**O. August 2010 Workbook**

109. On November 14, 2010, YES submitted a workbook to OSSE requesting reimbursement for program costs from August 1, 2010 through August 31, 2010. RX 215.
110. YES failed to provide documentation to substantiate payment of \$4,000 to Joseph Davis. No timesheets were presented to OSSE.
111. YES failed to provide documentation to substantiate payment of \$840 to Crystal Adams. No timesheets were presented to OSSE.
112. YES failed to provide documentation to substantiate payment of \$1,680 to Juanita Savoy. No timesheets were presented to OSSE.
113. YES failed to provide documentation to substantiate payment of \$600 to Christopher Green. No timesheets were presented to OSSE.
114. YES failed to provide documentation to support payment of \$600 to Matthew Oden. No timesheets were presented to OSSE.

115. YES failed to provide documentation to support payment of \$1,800 to Angel Shingler. No timesheets were presented to OSSE.

116. YES failed to provide supporting documentation for payment of \$600 to Christopher Harris. No timesheets or receipts were presented to OSSE.

117. YES failed to provide supporting documentation for payment of \$4,800 to K-Consulting. No timesheets were presented to OSSE.

118. YES failed to provide supporting documentation for payments of \$640 and \$1,920 made to James Crook. No timesheets or receipts were provided to OSSE.

119. YES failed to provide supporting documentation for payment of \$11,681.64 to City Gate. The invoice provided was for a different amount of \$13,014.04 than the reimbursement requested. No canceled checks were presented to OSSE reflecting proof of payment.

120. The Guidance on Time and Effort Requirements dated February 19, 2010, states the following as it pertains to payroll records: “Charges for employee compensation must be based on actual salaries paid and documented by the subgrantee’s financial system and that have been approved by a responsible official.” RX 201, page 4.

121. Petitioner’s Executive Director Joseph A. Davis, II paid his salary in Check No. 1317 dated January 20, 2010, the amount of \$1,916.62, which he identified as net salary.

122. Petitioner also paid Davis in Check No. 1467 dated January 31, 2010, the amount of \$2,317.50, which he identified as net salary.

123. The documentation of “net salary” does not comply with RX 201, page 4 in that the salaries paid have not been properly documented by the subgrantee’s financial system.

124. On February 9, 2011, the Office of Administrative Hearings issued a Final Agency Decision upholding OSSE's termination of YES's grant. RX 220.

125. Closeout on YES's grant began after OAH issued this Final Agency Decision and ended in July 2011. RX 222.

126. During the closeout period, OSSE repeatedly allowed YES to submit documents to substantiate its reimbursement requests. RX 221.

127. In July 2011, OSSE held a face-to-face meeting with YES Executive Director Joseph Davis, II, to go over each cost and all supporting documentation. RX 221.

#### **IV. Conclusions of Law**

Pursuant to a Memorandum of Understanding entered between the District of Columbia's Office of State Superintendent of Education (OSSE) and the Office of Administrative Hearings (OAH), OAH adjudicates cases involving vendor appeals before an impartial hearing officer. OAH is an independent agency that is a neutral, impartial tribunal that holds hearings and decides appeals from various agency decisions.

The relevant provisions of the grant letter are controlling in this case. Specifically, it states: "To request a cost reimbursement, a grant recipient had to submit to OSSE for review and processing Federal Grant Reimbursement Forms (containing valid costs paid by the grant recipient)." (RX 200, page 3). [Emphasis supplied.] Consequently, OSSE was allowed to approve costs YES had actually paid before submission of its reimbursement request.

As previously noted, YES's grant is a 21<sup>st</sup> CCLC state administered grant program. 20 U.S.C. 7173, 7174 (2006). The Education Department General Administrative Regulations (EDGAR) Part 76 contains the regulations that apply to state-administered programs. 34 C.F.R. Part 76.1(a)(2010).

EDGAR Part 80 is controlling as it pertains to state subawards (34 C.F.R. Part 80.1 (2010)). The relevant cost principals are found in EDGAR Part 80.22, which identifies OMB Circular A-122. 34 C.F.R. Part 80.22 (2010).

OSSE posits that costs that do not conform to the requirements of EDGAR, the Grant Award Agreement, and/or OMB Circular A-122 are not allowable. 34 C.F.R. Part 80.20(b)(5) (2010). I agree. EDGAR Part 80 states in pertinent part, “[e]ach grantee will report program outlays and program income on a cash basis or accrual basis **as prescribed by the awarding agency.**” 34 C.F.R. Part 80.41(b)(2)(2010).[Emphasis supplied.] As such, I see no error on the part of OSSE in disallowing the costs that it did. This position is supported by the plain language of the contract or Grant Award Agreement that requires that costs be paid by the subgrantee prior to submitting a claim for reimbursement.

YES contends that because OMB Circular A-122 mentions accrual-based accounting in its definition section, this type of accounting was approved for YES under this grant award. I disagree because OMB Circular A-122 requires subgrantees to “conform to any limitations or exclusions set forth in these principals **or in the award.**” 2 C.F. R. Part 230, App. A(A)(2)(b) (201). [Emphasis supplied.]

OMB Circular A-122 clearly and unambiguously states that a cost must be “adequately documented” in order to be allowable. 2 C.F.R. Part 230, App. A(A)(2)(g)(201). OSSE proved by a preponderance of evidence that YES’s costs were not adequately documented. This includes producing canceled checks as outlined in the Findings of Fact for payment of staff with no corresponding payroll records and contemporaneously prepared monthly timesheets signed by the employee and responsible official of the organization. It was YES’s obligation to provide accounting records “supported by such source documentation as cancelled checks, paid bills,

payrolls, time and attendance records, contract and subgrant award documents, etc.” 34 C.F.R. Part 80.20(b)(6) (2010). A failure to do so is adequate grounds to disallow costs.

There is also abundant record evidence that YES presented workbook requests seeking reimbursement for items that did not correspond with receipts, canceled checks or other supporting documents. YES is required to retain documentation for three years and provide access to its records upon request of the awarding agency. 34 C.F.R. Part 80.42(b)(1)(e) (2010). To that end, YES was given 90 days to submit all required documentation. 34 C.F.R. Part 80.50(b)(2010). In this instance, OSSE did extend the closeout period at YES’s request. Therefore, YES’s failure to produce the required documentation during this time period is grounds to refuse to allow any new supporting documentation that was not previously presented to OSSE. This is especially of concern when weighing the evidence in this proceeding because YES’s and City Gate’s failure to produce the proper source documentation at the closeout meeting in August 2010, (PX105 and Intervenor’s Exhibit “IX” 316) is sufficient grounds to not consider payroll records and other source documentation that were made a part of their exhibit list.

As noted in the findings of fact, YES substantiated to OSSE expenses paid in the total amount of \$7,654.78. RX 222. In its September 22, 2011 status report submission, OSSE stipulated to allow the following reimbursement requests, which YES submitted: a) a request for payee Antoinette Tourain in the amount of \$386.97; b) a request for hard drive in the amount of \$84.79; and c) a request for payee Victory Youth Centers, Inc., in the amount of \$1,710. These expenses total \$2181.76. In light of the foregoing, YES owes OSSE \$154,461.01 for unsubstantiated costs contained in its workbooks from October 1, 2009 through April 2010, because these costs were not properly substantiated, because timesheets were not signed by a



supervisor, canceled checks did not have supporting documentation such as properly maintained employee time sheets, and evidence of expenditures paid was not provided.

The pertinent regulations provide that where the “subgrantee materially fails to comply with any term of an award, whether stated in a federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may...disallow all or part of the cost of the activity or action not in compliance.” 34 C.F.R. Part 80.43(a)(2) (2010).

YES advanced two other arguments. First, it argued that the audit report should be disregarded because there was no proof it followed generally accepted audit principals. YES provided no expert witness or other explanation as to exactly what audit principles were not followed. For that reason, YES’s argument fails. In addition, I see no error on the part of OSSE in reaching its determination of disallowing the expenses that it did, especially in light of the evidence presented in this case of YES providing conflicting canceled checks and unsupported documentation to validate costs.

Secondly, YES contended that the audit report should be disregarded because there was a conflict of interest since OSSE was reporting the mishandling of funds to the federal government. YES presented no legal authority to support its position. I, therefore, conclude that the latter point also is without merit. Since the federal government is the party that issues the grant, there is no conflict in OSSE officials reporting to the federal authorities as to the outcome of this grant and associated activities.

City Gate asks this court to invoke the equitable doctrine of promissory estoppel based on conversations its official Dr. Lynn Bergfalk had with Mr. Derrick Blue of OSSE. In particular, Dr. Bergfalk alleges that Mr. Blue gave him “assurances” to proceed with its summer program

even after City Gate raised concerns about being paid in light of its awareness of YES's mishandling of grant funds. I cannot fully credit this testimony as a basis to award City Gate over \$76,000 in outstanding monies because it is not supported by any email or other relevant written documentation. I further concur with the line of cases cited by OSSE that administrative courts do not have the inherent equitable authority that courts in the judicial branch have derived from common law traditions and powers. *See generally Global Healthcare, Inc. v. Dist. Of Col. Dep't of Health Care Finance*, 2011-DHCF-00179, quoting *Ramos v. Dist. of Columbia Dep't of Consumer and Regulatory Affairs*, 601 A.2d 1069 (D.C. 1992).

The prevailing view is that “administrative officers and agencies have no common-law or inherent powers. Such bodies have only such jurisdiction or powers as have been granted to, or conferred on them by law, either expressly or by implication from the authorizing statute.” 73 C.J.S. Public Administrative Law and Procedure § 106 (2011). “An administrative agency is, of course, a ‘creature of statute [which] has no inherent powers and its authority thus does not reach beyond the warrant provided it by statute.’” *Dept. of Economic and Employment Development v. Lilley*, 106 Md. App. 744 (Md. 1995) (citations omitted).

Although the District of Columbia Court of Appeals (“Court of Appeals”) has never addressed the specific question of whether an ALJ from OAH can grant injunctive relief in a contested case, the court has clearly held in a case pre-dating OAH that ALJs lack the jurisdiction to grant equitable relief. In *Ramos v. D. C. Dep't of Consumer and Regulatory Affairs*, 601 A.2d 1069 (D.C. App. 1992), the Court of Appeals held that an ALJ does not have the jurisdiction to order remedies such as attorney's fees or punitive damages in favor of a respondent. The court stated:

In contrast with judicial tribunals, however, administrative law tribunals--created by the legislature to serve dispute resolution and rulemaking-by-order functions

within agencies of the executive branch--by definition and design do not have the inherent “equitable authority” that courts in the judicial branch have derived from common law traditions and powers. Administrative law judges only possess narrowly defined statutory and regulatory powers; they do not have the traditional equity power of courts to formulate remedies.

*Id.* at 1073.

While the court in *Ramos* specifically examined punitive damages and attorney’s fees within the context of the Consumer Protection Procedures Act, other courts in the District of Columbia and legal treatises have applied the same rationale regarding the exercise of equitable powers by ALJs. *See e.g., Prince Construction Co. v. D. C. Contract Appeals Board*, 892 A.2d 380, (D.C. 2006) (concluding only superior court can adjudicate *quantum meruit* claims because the administrative court can only enforce contract rights and lacks the jurisdiction to grant equitable remedies; *In re: Appeal of Employees of J.B. Johnson Nursing Home*, DCCAB No. D-1132 (2001) (District of Columbia Contract Appeals Board lacks the broad equitable powers of a court of general jurisdiction such as the District of Columbia Superior Court and therefore could not grant *quantum meruit* as a remedy); *District of Columbia v Group Ins. Admin.*, 633A.2d, 13-15 (D.C. 1993) (administrative agencies lack broad equitable powers compared to superior courts); *Hospital Corporation of America Providers with Late Notices of Program Reimbursement Providers v. Blue Cross Blue Shield Association/Various Intermediaries*, 2005 WL 3447734 (*P.R.R.B.*), (Dep’t of Health and Human Services, Health Care Financing Admin. March 3, 2005) (final admin. decision) (unlike courts, administrative agencies do not have any inherent equitable powers unless expressly provided by statute and the Medicare statute does not confer general equitable authority to the Board); 73 C.J.S. Public Administrative Law and Procedure § 111 (2011) (without express statutory or regulatory authority, regulatory agency may not impose remedial measures).

Where there is specific authorization in a statute, a different result follows. In *Paschall v. D. C. Dep't of Health*, 871 A.2d 463, 469 (D.C. 2005) the Court of Appeals reversed an OAH ALJ's decision that only the Superior Court had jurisdiction to grant equitable relief and order the readmission of a patient who was unlawfully discharged from a nursing home. The court determined that the ALJ could order readmission because the applicable federal Medicaid statute and regulations expressly require States "to maintain a 'hearing system' that provides, among other things, for admission or readmission of an individual to the facility if... (b) [t]he agency decides in the applicant's or recipient's favor before the hearing." *Id.* at 469. "These regulations, in our view, leave no further room for doubt that an ALJ may properly order readmission of a Medicaid resident in whose favor he has found either after a hearing, or as in this case, before it upon determining that the discharge notice was unlawful." *Id.* The court relied on the federal statute and regulations governing Medicare and Medicaid in its determination that ALJs had express authority to order admission or readmission of the individual to a facility. Therefore, that case is distinguishable from the current inquiry because the applicable federal statute and regulations in that case expressly authorized the agency to provide the remedy in question.

I conclude that the statutory grant to ALJs of power to "[p]erform other necessary and appropriate acts in the performance of his or her duties and properly exercise any other powers authorized by law," D.C. Official Code 2-1831.09(b)(10), is limited to that necessary for the administration of justice pursuant to statutorily-granted powers, which is distinguishable from common-law equitable powers. Therefore, I conclude that I do not have jurisdiction to invoke the equitable doctrine of promissory estoppel in this case. It bears emphasis that none of the provisions of the OAH Establishment Act, confers equity jurisdiction on the administrative law judges. This omission is not inadvertent, for it is well-established that administrative law judges

are not authorized to exercise equity jurisdiction. As the District of Columbia Court of Appeals bluntly noted: “Administrative agencies do not have inherent equitable power.” *Prince Constr. Co. v. D.C. Contract Appeals Bd.*, 892 A.2d 380, 384 (D.C. 2006) (citing *Ramos v. D.C. Dep’t of Consumer & Regulatory Affairs*, 601 A.2d 1069, 1073 (D.C. 1992)).

In addition, federal law does not authorize payment of unallowable costs on an equitable basis. 34 C.F.R. Part 80.22, 80.52(a)(201); 2 C.F.R. Part 230, App. A(2)(2010). For all of the foregoing reasons, OSSE’s disallowance of costs under YES’s subgrant is affirmed in part, and reversed in part. The following Order is entered.

#### **V. Order**

Based on the foregoing findings of fact and conclusions of law, it is this 6<sup>th</sup> day of March, 2012:

**ORDERED**, OSSE’s audit report dated August 4, 2011, requiring Petitioner Youth Engaged for Success (YES) to repay \$157,642.77 is **AFFIRMED** in part and **REVERSED** in part. YES is required to repay \$154,461.01; and it is further

**ORDERED**, that City Gate’s claim for relief is **DENIED**; and it is further

**ORDERED**, that any party may file a motion for reconsideration of this final order within 15 calendar days of the date of service of this final order for any reason set forth in OAH Rule 2828. The 15 calendar days consists of 10 calendar days (OAH Rule 2828), plus five days are added when service is made by first-class mail. 1 DCMR 2812.5; and it is further

**ORDERED**, that the appeal rights of any party aggrieved by this order are set forth below.

---

Claudia Barber  
Administrative Law Judge

## **Appendix:**

### **EXHIBITS ADMITTED INTO EVIDENCE:**

#### **PETITIONER'S EXHIBITS:**

- 100 Email from Vanessa Miranda to Joseph A. Davis, II with attachments
- 101 Email from Myles Cliff to Joseph A. Davis, II with attachments
- 103 Email from Sheryl Hamilton to Joseph A. Davis, II
- 104 Final Agency Decision dated February 9, 2011
- 105 Letter from OSSE to (YES) Joseph Davis, II dated August 24, 2010
- 106 Email from Joseph A. Davis, II to Vanessa Miranda with attachments
- 107 Email from Joseph A. Davis, II to Vanessa Miranda with attachments
- 109 Email from Joseph A. Davis, II to Vanessa Miranda with attachments
- 110 Email from Joseph A. Davis, II to Vanessa Miranda with attachments
- 111 Email from Joseph A. Davis, II to Vanessa Miranda with attachments
- 114 Check no. 1356, timesheets and account statement
- 115 Check no. 1357, timesheets and account statement
- 123 Request for Application Book
- 124 Email from Derrick Blue to Joseph A. Davis, II
- 125 Email from Derrick Blue to Joseph A. Davis, II
- 126 Email from Derrick Blue to Joseph A. Davis, II
- 130 Email from Joseph A. Davis, II to Sheryl Hamilton
- 138 Power point presentation: Tips and tools for a successful 21<sup>st</sup> CCLC program
- 164 YES and OSSE payment history

- 165 Rental agreement between YES and Victory Youth Center
- 166 Email re: rental in June 2010
- 167 handwritten letter dated July 29, 2010
- 168 Facility Agreement, page 2

#### RESPONDENT'S EXHIBITS ADMITTED INTO EVIDENCE

- 200 YES Grant Award Notification
- 201 Guidance on Time and Effort Requirements
- 202 October 2009 expenditure workbook
- 203 November 2009 expenditure workbook
- 204 December 2009 expenditure workbook
- 205 January 2010 expenditure workbook
- 206 February 2010 expenditure workbook
- 207 March 2010 expenditure workbook
- 208 April 2010 expenditure workbook
- 209 May 2010 expenditure workbook prepared 7-5-10
- 210 May 2010 expenditure workbook prepared 9-22-10
- 211 June 2010 expenditure workbook
- 212 April 2010-June 2010 expenditure workbook
- 213 July 2010 expenditure workbook prepared 11-14-10
- 214 February 2010-July 2010 expenditure workbook
- 215 August 2010 expenditure workbook
- 216 City Gate invoice October 2009-June 2010
- 217 City Gate timesheets not associate with invoice

- 218 August 24, 2010 letter from OSSE to YES
- 219 January 19, 2011 letter from OSSE to YES
- 220 Final Agency Decision 2-9-11
- 221 July 8, 2011 letter from OSSE to YES
- 222 August 4, 2010 letter from OSSE to YES
- 223 Supplementary Document Disclosure and attachments filed December 21, 2011

INTERVENOR'S EXHIBITS ADMITTED INTO EVIDENCE

- 314 Excerpts from April 2009 OSSE Power Point presentation  
entitled *Pre-Application Technical Assistance Workshop*
- 315 December 2009 Subgrantee Meeting Power Point presentation
- 316 Letter of June 3, 2011 from OSSE to Intervenor's counsel
- 317 Letter of May 6, 2011 from Intervenor's counsel to DC Council and OSSE